

§ 1628.4

subsequent to the termination date of the grant without the prior written approval of the Corporation. All unexpended funds under such grants shall be returned to the Corporation.

§ 1628.4 Procedure.

(a) Any recipient whose audited fund balance exceeds the ceiling set forth in § 1628.1 shall submit to the Director, Office of Field Services, within 120 days after the close of the recipient's fiscal year, a statement of the fund balance which occurred according to the annual audit required by section 1009(c)(1) of the Legal Services Corporation Act, as amended. The funds will be recovered as set forth in § 1628.3, unless excluded by a specific waiver.

(b) The recipient may, within 120 days after the close of its fiscal year, apply to the Director, Office of Field Services for a waiver of the 10% ceiling. Such application must specify:

(1) The fund balance amount according to the recipient's annual audit;

(2) The reason such fund balance has been attained;

(3) The recipient's plan for the disposition or reserve of such fund balance amount within the current grant period;

(4) The amount of fund balance projected to be carried forward at the close of the recipient's then current fiscal year; and,

(5) The extraordinary circumstances justifying the retention of the fund balance which include windfall receipts for which a recipient cannot reasonably plan, such as proceeds from the sale of property, receipt of direct payment to attorneys, and collection of insurance proceeds.

(c) Excess fund balance amounts shall not be expended by the recipient prior to approval of the waiver application by the Corporation.

(d) The decision of the Corporation regarding the granting of a waiver (other than the automatically granted waiver for a cash reserve for compensated bar programs) shall be guided by the statutory mandate requiring the recipient to provide high quality legal services in an effective and economical manner. In addition, the Corporation shall give special consideration to the following factors in reviewing a waiver

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request submitted pursuant to this regulation:

(1) Emergencies, unusual occurrences, or other extraordinary circumstances giving rise to the existence of a fund balance in excess of 10%, and the special needs of clients;

(2) The need for a recipient which operates a compensated bar program or component to maintain a cash reserve; and

(3) The recipient's financial management record.

(e) Excess fund balance amounts approved for expenditure must be separately reported in the current fiscal year audit. This may be done by establishing a separate fund or by providing a separate supplemental schedule as part of the audit report.

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§ 1628.5 Fund balance deficits.

(a) Sound financial management practices such as those established in LSC's "Fundamental Criteria of an Accounting and Financial Reporting System," should preclude deficit spending. Use of current year LSC grant funds to liquidate deficit balances in the LSC fund from a preceding period(s) requires the prior written approval of the Corporation.

(b) The recipient may, within 120 days of the close of its fiscal year, apply to the Corporation for approval of the costs associated with the liquidation of the deficit balances in the LSC fund.

(c) In the absence of approval by the Corporation, expenditures of current year LSC grant funds to liquidate a deficit from a prior year shall be identified as questioned costs.

(d) The recipient's request must specify the same information relative to the deficit LSC fund balance as that set forth in sections 1628.4(b) (1), (2), (3), and (4). Additionally, the recipient must develop and submit a plan approved by its governing body describing the measures which will be implemented to prevent a recurrence of a deficit balance in the LSC fund. The Corporation reserves the right to require changes in the submitted plan.

(e) The decision of the Corporation regarding acceptance of these deficit-related costs shall be guided by the